

OGC 78-1930

3 April 1978

O/C - 78 - 1266

MEMORANDUM FOR : FOIA/PA Review Officers

FROM :

STATINTL

Office of General Counsel

SUBJECT : Protection of State and Local Government Sources

1. The identity of various state and local government entities (by organizational name or names of employees) which have in the past supplied this Agency with intelligence information appears in many Agency documents which are responsive to FOIA and Privacy Act requests. The proper protection of these intelligence sources is a continuing problem.

2. It is the opinion of the Office of General Counsel that when protection of the identity of these non-federal government entities and/or the name of an employee of same is deemed necessary, the deletion is properly made on the basis of exemption (b)(3) or (j)(1) as a source of intelligence information. It is not appropriate to cite exemption (b)(1) or (k)(1), regardless of the fact that such an organization may style itself, "Foreign Intelligence Division," or of the mere possibility that such information may have been acquired by the organization from some non-domestic source. This has been our consistent legal policy for over two years in both administrative proceedings and litigation (see, for example, Marks v. CIA, 426 F. Supp. 708 (D.C.D.C. 1976), appeal pending, #77-1255 (D.C. Cir. 1978). Sutherland v. CIA, #76-968 (D.C.C.D. Cal., 1976). Note, that there may be instances in which the identity of an individual employee of a state or local agency may be withheld on grounds of classification, but such assertion must be justifiable under the specific facts prevailing in such case. Mere association with a local agency is not sufficient.

3. The use of exemption (b)(6) of the FOIA or section (b) of the Privacy Act to protect the names of individual employees of such local governmental organizations is incorrect if the names of the individuals are mentioned in connection with the performance of official duties. Again, where deletions of an employee name is deemed necessary, the proper basis is exemption (b)(3) or (j)(1), applied to protect the source.

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CONCUR:

MORI/CDP

General Counsel

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